



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1017 OF 2025

Shaikh Fasiyoddin Mohiyoddin,
age 65 years, occ. Nil,
R/o. Dhondipura, Beed, Tq. & Dist. Beed. ...Petitioner

Versus

1. Uzama Begum Mohammad Faizuddin,
age 33 years, occu. Household,
R/o. C/o. Shafik Ahmed Abdul Sattar, Islampura,
Baba Chowk, Beed, Tq. & Dist. Beed.
2. Mohammad Fujel Mohammad Faizuddin,
age 2 years, U/g. Uzama Begum Mohammad Faizuddin,
age 33 years, occu. Household,
R/o. C/o. Shafik Ahmed Abdul Sattar, Islampura,
Baba Chowk, Beed, Tq. & Dist. Beed.
3. Mohammad Faizuddin Fasiyoddin,
age 35 years, occu. Business,
R/o. As above.
4. Nusrat Begum Shaikh Fasiyoddin,
age 55 years, occu. Household,
R/o. Dhondipura, Beed, Tq. & Dist. Beed.
5. Shaikh Sana Shaikh Fasiyoddin,
age 25 years, occu. Education,
R/o. Dhondipura, Beed, Tq. & Dist. Beed.
6. Shaikh Saad Shaikh Fasiyoddin,
age 23 years, occu. Labour,
R/o. Dhondipura, Beed, Tq. & Dist. Beed.
7. Shaikh Talha Shaikh Fasiyoddin,
age 20 years, occu. Household,
R/o. Dhondipura, Beed, Tq. & Dist. Beed. ...Respondents

...

Advocate for the Petitioner : Mr. Abhay G. Deshmukh (Mogarekar)
Advocate for Respondent Nos. 1 & 2 : Ms Auti Samiksha S.
Advocate for Respondent Nos. 4 to 7 : Mr. Baig Mirza Mazhar Javed

CORAM : ABHAY J. MANTRI, J.

DATE : 17TH DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for the respective parties at the admission stage.

2. By this petition, the petitioner is challenging the order dated 12.06.2025, passed by learned Sessions Judge, Beed, in Criminal Appeal No. 28/2025, whereby the order dated 06.12.2024, passed by learned 8th Judicial Magistrate First Class, Beed (for short '**learned Magistrate**'), in Criminal M.A. No. 204/2024, was confirmed and, whereby granted the reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V Act**'), has preferred this petition.

3. Heard learned Advocate for the petitioner at length. The crux of his argument is that no notice was served on the petitioner by following due process of law in accordance with Rule 12 of the Domestic Violence Rules, 2006 (for short '**D.V Rules**'), and therefore, no opportunity has been granted to the petitioner to contest the petition. As such, he urged remanding the matter to the Trial Court.

4. During the argument, he also tried to canvass that the petitioner is the owner of the house, and therefore, passing of the order at clause no. 4, by the learned Magistrate, i.e. “*respondents are restrained from dispossessing the applicants from three rooms, is illegal.*” He further argued that respondents nos. 1 and 2 are hand in glove with respondent no. 3; therefore, he filed the application, and he also contended that respondent no. 3 himself refused the notices on behalf of the petitioner and other respondents. 4 to 7. Therefore, it cannot be said that sufficient opportunity was granted to the petitioner to contest the matter, and as such, he urged for remanding the matter to the Trial Court.

5. On the other hand, learned Advocate for respondent nos. 1 and 2, submitted that the proper notice was issued to the petitioner and others and served on the petitioner as well as the rest of the respondents no. 3 to 7. Therefore, the learned Magistrate passed the order below, Exhibit 1, that the notices were issued to the petitioner and other respondents; however, they refused to take the notices, and thus, it was inferred that the said notice had been served on the petitioner and others. Therefore, he submitted that it cannot be said that no notices were properly served on the petitioner and the other respondents. Secondly, he

submitted that nothing has been brought on record to demonstrate that respondents nos. 1 and 2 are hand in glove with respondent no. 3. Therefore, he urged for dismissal of the petition as the passing of the orders by both the Courts below are just and proper, and no interference is required.

6. Having heard the rival contentions of the parties and perusal of the record, at the outset, it appears that the learned Magistrate has issued the notices to the respondent through RPAD and the same were served on the petitioner and the rest of the respondents. However, they refused to accept the envelopes containing the notices; therefore, the learned Magistrate held that the notices were deemed served on the petitioner and other respondents. Similarly, in paragraph 6 of the judgment, the learned Magistrate observed that, despite service of summons on the respondents, they failed to appear in the matter. Therefore, the matter was proceeded ex parte against them. The order at exhibit 1 and observation in paragraph no. 6 of the impugned judgment indicate that, despite the service of the notice, the petitioner or the rest of the respondents failed to appear before the Court. Therefore, the matter was proceeded with as an ex parte against them. Moreover, the petitioner does not contend that the address

on the envelope was incorrect or that his name was not mentioned on the envelope. Thus, *prima facie*, I do not find substance in the contention of the learned Advocate for the petitioner that notice was not duly served on him as per Rule 12 of the D.V. Rules.

7. Perused Rule 12 of the D.V. Rules, 2006, I would like to reproduce Rule 12 as under :

“12. Means of service of notices.—

(1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of the person concerned.

(2) The service of notices shall be made in the following manner, namely:—

(a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be.

(b) The notice shall be delivered to any person in charge of such place at the moment, and in case of such delivery not being possible, it shall be pasted at a conspicuous place on the premises.

(c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under

Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974), as far as practicable, may be adopted.

(d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for the appearance of the respondent, or a report of the person authorised to serve the notices under the Act, that service has been effected, appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.”

8. Bare perusal of the said Rule indicates that Rule mandates the service through the Protection Officer or any person directed by him to serve the same even assuming that the notices

shall be served by Protection Officer that does not mean that the notice by other mode is impermissible or it cannot be said that service of notice by other mode than Protection Officer would amount to improper service and not valid service. It can be noted that not serving the notices through the Protection Officer at most causes irregularities in serving the notices instead of illegality, and therefore, in my view, it would not help the petitioner to challenge the entire proceeding on the said ground. Apart from that, in the appeal memo before the learned Sessions Court, the petitioner has not taken the said ground at the first instance to demonstrate that no notice was properly served on the petitioner. Still, he has only taken the ground that respondent no. 3, himself, took the summons of the petitioner and did not appear before the learned Magistrate. That means the petitioner himself is accepting that notices were issued against him and others, and that the same were received by respondent no. 2, who is the petitioner's son. However, he, *prima facie*, failed to show that respondents nos. 1 and 2 are hand in glove with respondent no. 3; therefore, I do not find substance in his contention that no notice was appropriately served as mandated by the Rules.

9. I would like to reproduce the operative part of the

order passed by the learned Magistrate as under :

- “1. The application is partly allowed.*
- 2. Respondent no. 1 is directed to pay the maintenance of Rs. 4,000/- per month (Rs. Four Thousand only) to applicant no. 1 and the maintenance of Rs. 2,000/- per month (Rs. Two Thousand only) to applicant no. 2 from the date of this application, including interim maintenance, if any granted.*
- 3. Respondent no. 1 is directed to pay the compensation of Rs. 5,000/- (Rs. Five Thousand only) to applicant no. 1.*
- 4. The respondents are hereby restrained from dispossessing the applicants of the three rooms on the ground floor of the house no.2-6-48.*
- 5. The respondents are hereby prohibited by a protection order from causing domestic violence to applicant no. 1.*
- 6. Copy of this order be provided free of cost to each of the parties in the proceeding.*
- 7. Copy of this order be provided free of cost to both the parties and be sent to officer in-charge of the police station within local limits of whose jurisdiction respondent no. 1 resides and to protection officer.*
- 8. Both parties to bear their respective costs of this application.”*

10. Bare perusal of the said order, it appears that by the said order, the learned Magistrate has directed respondent no. 1,

i.e. respondent no. 3 herein, to pay the maintenance to respondents nos. 1 and 2. Learned Magistrate directed respondent no. 1, i.e. respondent no. 3 herein, to pay maintenance and compensation to respondent no. 1 herein, and no liability was imposed on the applicant.

11. As per clause nos. 4 and 5, of the respondents, i. e. petitioner and respondent Nos. 3 to 7 were restrained from dispossessing the applicants, i.e. respondent nos. 1 and 2, and also prohibited them from causing domestic violence to applicant no. 1. No specific order was passed against the present petitioner restraining him from doing a particular Act. Nevertheless, a general order was passed against all respondents in the original application. However, none of the respondents have preferred any appeal or petition challenging the said order, which leads to drawing an adverse inference.

12. During the argument, learned Advocate for the petitioner contended that it is self-acquired property, and therefore, passing of the order at clause no. 4 is illegal. However, in view of the law laid down by the Hon'ble Apex Court in *Satish Chander Ahuja Versus Sneha Ahuja, AIR ONLINE 2020 SC 784*, in paragraph no. 84, I do not find substance in his contentions as the

mandate in the said case is applicable in the case at hand, which reads thus :

“84. In view of the foregoing discussions, we answer issue Nos. 1 and 2 in the following manner:-

(i) The definition of shared household given in Section 2 (s) cannot be read to mean that a shared household can only be that household which is the household of the joint family of which the husband is a member, or in which the husband of the aggrieved person has a share.

(ii) The judgment of this Court in S.R. Batra v. Taruna Batra (supra) has not correctly interpreted Section 2(s) of the Act, 2005, and the judgment does not lay down a correct law.”

13. Apart from this, perused the appeal memo, before the learned Additional Sessions Judge, the petitioner failed to raise the ground which he raised before this Court, and also fails to demonstrate how the said order caused prejudice to him, especially as per his submission, it appears that respondent nos. 1 to 3 are living separately from him. In such circumstances, it cannot be said that the said order passed in clause no. 4 would cause prejudice to his rights.

14. In view of the law down in **Satish Chander Ahuja** (supra) as well as mandate in Section 19 (1) (A) of the D.V. Act, and considering the above discussion, it appears that petitioner fails to demonstrate that no notice was served appropriately on him by the learned Magistrate, and therefore, he could not get the opportunity

to contest the application. On the contrary, it seems that notice was duly served on the petitioner, but he failed to accept the same, and therefore, the matter was proceeded ex-party. Similarly, passing of the order in clause nos. 4 and 5 would not cause any prejudice to the rights of the petitioner in view of the mandate of Section 19 (1) (A) of the D.V. Act, and therefore, I also do not find merit in the petition.

15. As a result, the petition being devoid of merits, stands dismissed. The rule is discharged. No order as to costs.

16. At this stage, the learned Advocate for the petitioner urged for continuation of the protection granted by this Court vide order dated 28.07.2025, for which the learned Advocate for the respondents submitted to the order of the Court. Hence, considering the fact that during the pendency of the appeal as well as this petition, the stay was operating to the impugned order. In such circumstances, in my view, it would be appropriate to continue the said protection for a period of eight weeks. It will not extend thereafter on any ground. Informed the concerned courts accordingly.

(ABHAY J. MANTRI, J.)